

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

L. E. DOAN,

Appellant,

VS.

B. T. DYER,

Appellee.

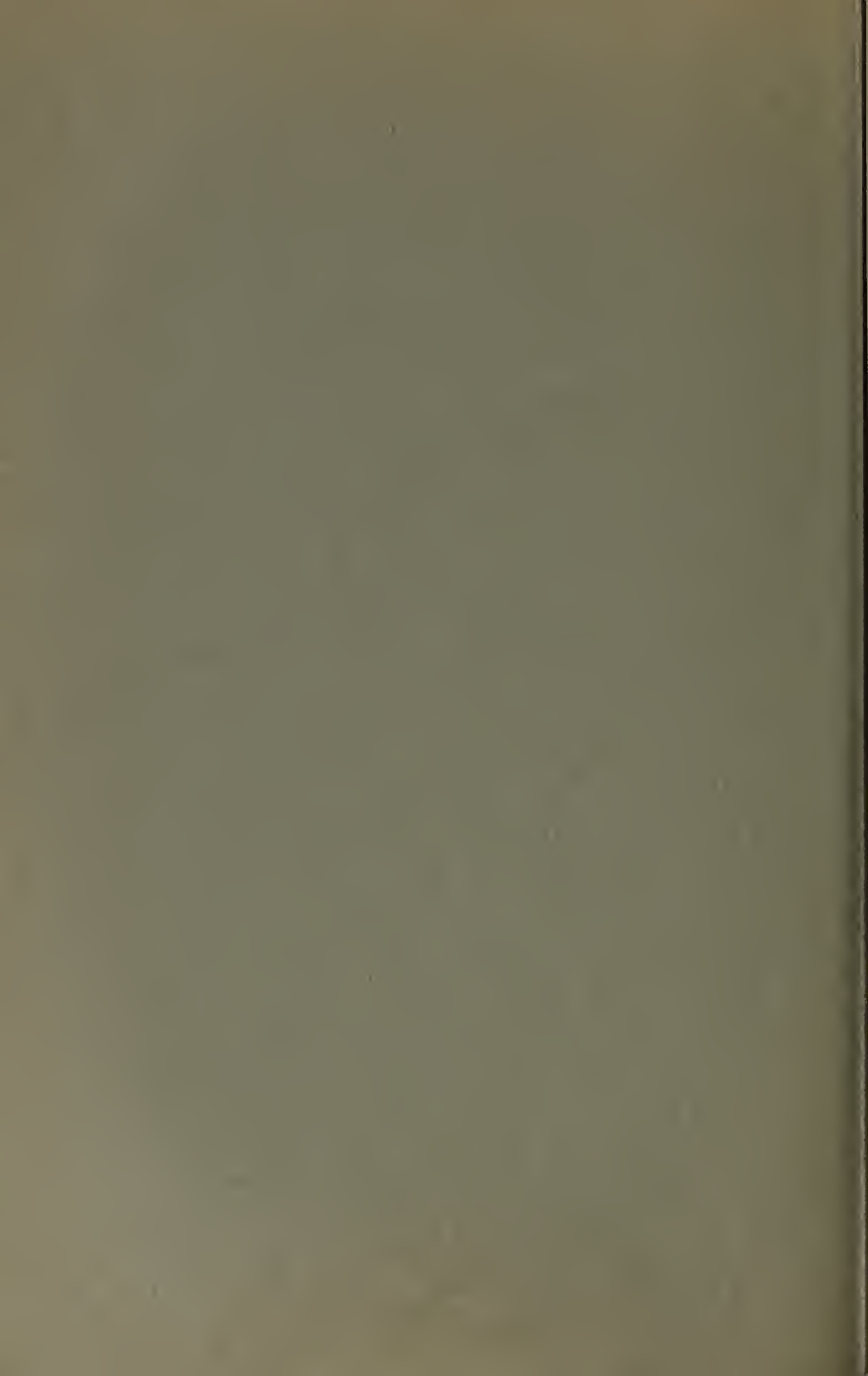
No. 3915

ORAL ARGUMENT OF WILLIAM H. METSON.

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Mr. METSON: May it please the Court, I rather think that your Honors might conclude that Judge Rudkin should be fined for signing a decree such as he has in this case upon the record presented by my learned friend here. But I think that Judge Rudkin looked upon this case as the record really is, and not as stated by counsel.

Under the law of California, our Civil Code, Section 2395, defines a partnership as "An association of two or more persons for the purpose of carrying on business together and dividing the profits between them."

The losses, if any, are applied by the law. In this matter there were no losses to be considered.

Dyer and Doan had been friends for years. They had their offices together in San Francisco, in the Balboa Building, till along about 1918. At that time, and while there together, a telegram was received, addressed to B. T. Dyer, Balboa Building:

"It is the consensus of opinion that Ranger Fields lying between Fort Worth, Brownwood, Coleman, offer possibilities as great as Oklahoma. Have just driven through field and this is my own conclusion. Am so impressed that have authorized installation two stores at Fort Worth and Ranger. *Believe you and Doan could make great success, but question the advisability of your coming alone. It requires two. You and Doan have the necessary combination of ideas and energy to make good. In my opinion, there would be no question about you doing so, although all large Eastern companies as well as Mid-continent and Texas are represented. We will perhaps see the greatest drilling campaign in the vicinity of the prospective fields in the history of the country. I saw one very excellent well producing 1500 barrels of 36 gravity oil, and possibilities are very big and the extent of the field so great that it is difficult to describe them to you in this wire.*" (Signed) J. F. Lucey. (Tr. p. 106.)

That telegram was shown by Mr. Dyer to Mr. Doan, away back in March, 1918. They talked the matter over, and after a while Mr. Dyer went to New York, and from there on May 9, 1918, he wired L. E. Doan:

“Carr and Lucey here. Carr just from Texas. They report Texas wonderful. Lucey says had we come when they wired we would have made more than we would have made in California. They report while many lessors are active there is still splendid opportunity on account of area of field proving daily. Talk this over with Fleishhaker if you think best. See if he is interested go in game with us, otherwise believe Toronto crowd will back me. Advise him Wyoming deal made. Will likely be home last of week.”

(Signed) B. T. Dyer. (Tr. p. 107-108.)

Following that, Mr. Dyer returned from New York, and again took the matter up with Mr. Doan in San Francisco. Mr. Doan was tied up by litigation, so Mr. Dyer alone went down to Texas and stayed there six weeks. Then he returned to San Francisco; Mr. Doan was in Seattle, and he wired Doan and Doan answered:

“I arrive San Francisco Sunday morning. Titus will not be there until August 1st. Nothing doing about Texas until he arrives. Do not go until I arrive.” (Tr. p. 153.)

Dyer waited until Doan arrived, and they talked the matter over, and Dyer testifies that they decided to go into partnership, and that he, Dyer, was to proceed to Texas and enter into the business, to be followed by Doan just as soon as he could.

To evidence that, they did talk it over and make a contract and, we have a letter signed by

Doan, dated August 9, 1918, found at page 111 of the transcript. This is an answer by Doan to letters received from Dyer reporting the situation:

“Received your letter of the 4th this morning—with clipping enclosed—I am thoroughly satisfied that there are many opportunities in that country and you are on the right line—it takes big money, however, to do business. I have been thinking hard about the whole thing—and I have tried to make up my mind what is the best way to handle the situation, and *I have about come to the conclusion that our first hunch was the best.*

“I am satisfied, Tom, that *we must first raise at least \$100,000* before we can expect to do any business—*we must have the money first.* As soon as you have some good things lined up so *we* have something to talk about, *we* should then *get busy and raise the money.* Lucey and Titus will go in.” (Tr. p. 111-112.) Following that, Mr. Doan follows Mr. Dyer to Texas, and they continued their investigations there, both in Texas, Oklahoma, and in Louisiana, and they made a deal with some leases there, and bought about 10,000 acres at 50 cents and sold them at \$1.25.

We go to the next letter, may it please the Court, which is dated February 10, 1919, from Mr. Doan to Mr. Dyer:

“*Titus will be here tomorrow* and I will have a further talk with him”—Doan being in San Francisco—“*I think he is the only one we can really*

count on, unless Lucey and Hoover are ready to go. I guess we will have to go to the bat ourselves, and when we find something good tie it up. I am sure Titus will finance anything after we get it and can say it is good. Why don't you go down to Houston and Shreveport, Louisiana and get a line-up there before I come, so we will know where it is best for us to dip in." (Tr. 239.)

Again, on February 15, 1919, from San Francisco, Mr. Doan writes to Mr. Dyer as follows:

"I will not be able to reach Fort Worth much before the 1st of March. Don't you think it would be a good idea for you to go to Houston and Shreveport, Louisiana, before I arrive—get things lined up in these fields—even if Hoover and Lucey don't come through I can depend on Titus, and will want to look all the fields over and pick something good. With all the different lines we can work when we get started there will be plenty for us to do, and we will make good." (Tr. p. 218.)

Mr. Doan still continuing in San Francisco, (Tr. 218) and Mr. Dyer still continuing in Texas, and Oklahoma, and that section, Mr. Dyer, alone, made some investments for the firm. He made a deal with a man named Cockrell; (Tr. 161) he made the deal in his own name, (Tr. 121) he put up his own money, he made the *first payment* (Tr. 161) and he made the *second payment*, (Tr. 160) and before the third payment came due he sold the property and made a profit for Doan and Dyer of \$7000. (Tr. 160.)

Still continuing, Mr. Doan still being in San Francisco, Dyer looked up further properties, and a little later got a property in his own name (Tr. p. 121; Tr. 99) from a man named Olcott in Eastland County, Texas. He gave his check for \$500, (Tr. 161; Tr. 28-9) and later Mr. Doan paid the balance of the money, and it was sold and there was a profit of another \$7000 for Dyer and Doan (Tr. 99; Tr. 181; Tr. 121).

They then went into another deal called the Tillman County, Oklahoma, deal, about May '19. That was a lease which they went in with a man named Couch, who made the first payment on the property. (Tr. 87.) Couch paid \$1000 and then later \$8000 was paid by Doan, and the balance of his half was repaid to Doan by Couch. (Tr. 88.) Title was taken in the name of Tom Owens. (Tr. 123.)

In the meantime there was another piece of land in Texas called the Lamb tract, which was put up to Mr. Doan in Fort Worth, and he asked Mr. Dyer to go from there to Wichita Falls, where this piece was, and look it over, and if he thought it was all right to buy it (Tr. 207). Dyer went up there, looked it over, got Doan on the telephone, and told him it looked good, and they decided to buy it, and he paid \$10,000 down, and then, later on, in 15 days, Doan went up there, looked the property over, and paid the balance of the purchase price, which was \$30,000 (Tr. 208).

In the meantime, on the 10th of April, 1919, (Tr. 320) Doan had gone to Louisiana (Tr. 211)

and made investments in Louisiana, and put up \$1000 or \$2000 for an option on what is called the Clark & Greer property, (Tr. 320) and then, later on, what is known as the Giffen well, about the 10th of April, 1919, (Tr. 263) and then Titus appeared upon the scene May 16-17, 1919 (Tr. Wires, p. 226-225) and they talked it over back and forth, and then Lucey came there on the 30th of May, 1919.

Now, your Honors will remember the letters that I have read. That one of the objects for which these people had gotten together was to get money with which to operate together, and the people from whom they expected to get the money were Titus and Lucey (Letters Aug. 9, 1918, Feb. 10, 15 and 19 Tr. 111, 218, 239). Titus put up, and, May 5, 1919 (Tr. p. 214), had put up \$40,000 (Tr. 214). Lucey put up \$50,000 June 17, 1919, July 15 (Tr. 341) and they went into this deal over in Louisiana, and they made a corporation called the Doan Oil Company, and into this Doan Oil Company Doan says that he transferred this Lamb tract in Texas, and this other Tillman County property in Oklahoma. This he did not do. It remained in Owens' and his names.

The business of the corporation was oil. The capital stock was fixed at \$500,000, and 300,000 shares were issued, 150,000 to Mr. Titus, 100,000 to Mr. Doan, and 50,000 to Mr. Lucey (Tr. 169). Lucey put up \$50,000, but until September, 1919 Doan put up none of his money at all. He was

playing for a sure thing (Tr. 339). All of this argument about Mr. Doan being the boss and doing this and that and the other thing, and all the property being in his name I have shown is not true. It resolves itself down into this, as your Honors will see when you scrutinize this record. You will see the shrewdness and the capacity of this lawyer, Doan, throughout this entire transaction. He had the purpose of doing up somebody, and taking good care that he did not get his own fingers burned.

I now read from the record of the Doan Oil Company, at page 169 of the transcript: "President Doan reported that prior to incorporation he had purchased the following oil leases, which were conveyed to him as trustee. Pugh lease, \$8025. Oklahoma lease, \$8060. Always in the name of Tom Owens (Tr. p. 89 Check). Burkburnett lease, \$40,000, that is the Lamb tract, the Commanche lease \$1000, the Looney lease \$8800, Bull Bayou lease \$3547.50, making a total of \$69,432.50." Also that he made the following disbursements for the benefit of the company, the Looney lease: equipment \$3000.53, sundry expenses \$1614.09, automobile equipment \$2797.52.

Now in their operations down in that country these men, Dyer and Doan, together, had bought an automobile, (Telegram Tr. 232) and this is the automobile equipment Doan is taking credit for in the Doan Oil Company, (Tr. 346-7) in which Doan says Dyer is not interested at all, he is out of it; that is too good for Dyer to be in.

Reading further from the minutes: "also that he had sold the Oklahoma lease for \$8917.50". He charges in the Oklahoma lease, which is this Tillman County, Oklahoma property that I was talking about, in which he owns only a half interest, costing about \$500—he charges that in at \$8060. He said also he sold the Oklahoma lease for \$8917.50. That was not true, because that property was never in Doan's name (Tr. p. 121). This was bought May, '19 and part sold Feby. '20. See check (Tr. 89). The only piece of property in this deal, outside of some in Louisiana, that was ever in Doan's name, was this Lamb tract at Burkburnett of 5 acres. Couch, in May, took the Tillman County, Oklahoma, property in the name of Tom Owens, (Tr. 121) and he sold 40 acres for more than they paid, (paid \$4000 and got back from first 40 acres \$5387.50 (Tr. 88) so that Doan got back out of the 40 acres about \$750 more money on June 10, 1919, (Tr. 88) before the organization of the Doan Oil Company, which was June 27, 1919, than he paid for his half interest in the whole tract, and there were 35 acres left in the name of Tom Owens. In other words, he got \$750 to \$780 more money back before this corporation record I read was made. And on February 9, 1920, he got another check for \$2700 odd (Tr. 89; Tr. 98). This deal on the Oklahoma tract was made between Couch and Dyer; (Tr. 87) in this instance they, not Doan, made the deal (Tr. 91). Dyer was on the ground. He telephoned to Doan, and it was agreeable to him, and they took it over,

and the proceeds went into the Doan Oil Company, (Tr. p. 88; Tr. 89) and still Dyer isn't in the Doan Oil Company, although Dyer paid the attorneys fees for examining title and recording (Tr. 164, 287). Money was put up by Mr. Dyer for his half of the automobile, (Tr. p. 233) and that went into the Doan Oil Company, (Tr. 232) in 1919, in July, (Wire Tr. 232) and Doan took credit for it (Tr. 169, 170) from Doan Oil Co., and yet Dyer is not in the Doan Oil Company at all. And this Lamb tract, which Dyer went up there and bought, and which Titus paid for, went in (Dyer paid the Atty. fees thereon, Tr. 164)—and Titus and Lucey were the men that they had in mind (Letters Tr. pp. 111 and 218) to furnish the money, and who did furnish the money—and yet, Dyer isn't in the Doan Oil Co. No.

The record shows they went on with their business in April for the purchase of land in Louisiana, (Tr. 263). (Wire May 17, 19, Tr. 225; Tr. 226) followed by purchases in May, (Tr. 225-226) and then we come down to this North Texas Supply Company that counsel deraigns about.

The Doan letters of February 10 and February 15, 1919, (Tr. 218; Tr. 239) and the letter of August, 1918, (Tr. 111) from Doan to Dyer, say explicitly,—That is what we want, we want Titus and we want Lucey, and we want them to furnish the money. So on the 30th of May Doan brings Lucey into Dyer's room and says, "Now, good morning, Mr. President"—and Dyer objects and

says, "What is this?" And he said, "We are organizing a supply company, and we want you in." He said, "I am not in the supply business, I am in the oil game, I do not want to go into the supply game, and I won't do it." They talked around for a while trying to persuade Dyer to go in, but he would not go in. Then Doan said to them, "I want to talk to Dyer alone" (Tr. 298). So he talked to Dyer alone, and he told Dyer this: "Now, Lucey will put up \$50,000 in this business over in Shreveport if you will take charge of this supply business; (Tr. 299) the Lucey Manufacturing Company cannot go into Wichita Falls, (Tr. 284; Tr. 291) they have a contract with the Continental Company and they cannot go in under their own name, and we want to organize a company, and if you will take charge of it and act as president Lucey will put in \$50,000 in the oil game in Shreveport." They talked it over for a while, and Dyer consented to head this Wichita Falls transaction, and did head it. They subscribed \$50,000, mostly by Lucey—they collected only \$40,000 on the subscription (Tr. 306). Dyer brought the stock up to par and made it worth \$2.18 a share. He made \$100,000 for it in six months. Doan's letters to Dyer show that Lucey had informed him that he wanted Dyer to get the \$10,000 bonus stock for so doing that had been agreed upon (Tr. 141; Tr. 148; Tr. 223). The letter of November 13, 1919, shows that Lucey had written that Dyer had managed the company so well that he wanted Dyer to get the bonus stock, which

had been agreed upon, if Dyer made a success. Doan objected, (1920 Tr.) although Doan was to get half of the bonus stock. Doan testified he, Doan, was not to get it, (Tr. 214) but this case was brought first in the State court, and as soon as the action was commenced we took Mr. Doan's deposition, and in the deposition (Tr. p. 262) as a witness Doan admitted he was to get half of the bonus stock; evidently, he had forgotten it when he testified in the trial. They went on for a while further, and Doan protested against the issuance of that bonus stock (Letter to Colby, Tr. 257). It was agreed Dyer was to be carried by Lucey for some stock (Tr. 314; Tr. 287); he was not carried. Lucey did not have the money and Dyer would not put any money into the oil supply business. The record shows that Carr wrote him in 1920 congratulating him upon the success of the North Texas Supply Company (Tr. 280).

The North Texas Supply Company is pitchforked into this case without any paternity, whatsoever.

If there was a contract made originally, and the court found that there was one, and we hope your Honors will find that there was one, and the other side deny it in their answer here, then they should have pleaded a breach of that contract, or some other contract taking the place of it,—a novation, a release—the end of that contract and the making of a new one. It is not in their answer, and the North Texas Supply evidentiary attempted defense has

no standing in this court, and had no standing in the court below, because they did not plead it.

Now, being aware of the rule that oral testimony is to be scrutinized carefully, I want to call your Honor's attention to the evidence that demonstrates that Dyer was interested in Louisiana. W. L. Leland testified:

"Shortly after Doan made his trip to Louisiana when he bought the 40 acres from Greer & Clark, then on subsequent trips he made down there I had conversations from time to time with him referring to Louisiana property. It was pretty early in April when he made the first purchase. He showed me maps when he came back. He suggested I buy an adjoining piece, and I went down and looked at the land. The first conversation, I think, was in the morning he returned from Louisiana back to Fort Worth. Doan said, 'Tom and I are in a way to make a lot of money down there' (Tr. p. 93). F. E. Couch testified to practically the same thing. Jacob Berger testified to conversation with Doan of similar character. F. L. Keller testified to conversation of similar character. H. F. Berry testifies to conversation of similar character. Mestre Olcott testified to conversation of similar character. Edward J. Buckingham and L. E. H. DeSallier testified to conversations of similar character, and so does A. P. Jergens. Joseph Martin testified, 'I remember some conversation with reference to some oil tank cars about May, 1919. Doan said 'Sometime you will see Doan & Dyer's name

on the cars for the oil that came out of Burkburnett field.' That is in Burkburnett, where they had some property" (Tr. p. 292). Leslie J. Coggins testified, "I know Doan and Dyer. I saw them in Texas in 1919, in May. Mr. Martin and myself met them at Wichita Falls. They said they owned a 5-acre tract there. Mr. Doan or Mr. Dyer said, 'Well, Mr. Martin, some day—you see those tank cars over there—you will see our names on them, Doan & Dyer; we will get it right up here in this little field' " (Tr. p. 205).

Is Doan mistaken or were all these witnesses mistaken?

Now, take the North Texas Supply Company. In the first place, they claim that Dyer absented himself from Texas, or Wichita Falls. The record shows that he went away on business each time; he came to California to buy tools, (Tr. 307) and to New York on business (Tr. 307-8).

Counsel does not in his argument, or in his brief, quote the transcript correctly, nor did he, in his argument a few minutes ago, quote correctly what was said by Mr. Dyer. Counsel says Dyer testified: "I never invested one cent individually in any of these projects of Doan's", and he told you that with great ego. But the transcript reads this way: "I never invested any money in Louisiana in any property in which Doan was interested *except through Doan*", and then Dyer goes on, "I never invested one cent individually in any of these pro-

jects of Doan's." My colleague must have overlooked the first part of the statement I just read, or he would not have said what he did.

He also did not read far enough in the letter of October 12. At page 130 of the transcript I read further, "While there is a big boom on here, I have not seen anything that I could recommend to your crowd—that we cannot handle ourselves—and as I said before, I cannot afford to mix up with you on any outside deals in Louisiana—I don't want to be criticised by Titus and Cap. Lucey—so I think it is the better policy for you to confine your operations to Texas and Oklahoma for the present—if I should start something else here it would result in hard feelings, and I want to avoid that if I can."

Now, if the Court will bear that in mind, that letter is dated October 12, 1919, but when your Honors come to look at this record and for comparisons look at the letters in September preceding this, you will find there that Mr. Doan urges Mr. Dyer to send Delaney over there for the purpose of the California intended investment, to make investigation of the Homer field (Tr. p. 243; Tr. 145; Tr. 245) Mr. Ray tells him that the Homer field is coming in, and it would be a good thing for the California company. In the September letters Doan was for investing in Louisiana. In October he changed. These letters run from September 1st to 20th, at which time something happened over in Louisiana. A well came in on the 25th of Septem-

ber, 1919, for the Doan Oil Company, producing 4000 barrels a day of \$2 oil. A telegram is in the record from Doan to his brother, telling him how fine things are looking for the Doan Oil Company, so that, after that well came in, there was in Doan's mind no place for Dyer (Tr. 376).

If your Honors please, the first purchase in Louisiana, to which place Dyer was not permitted to go, you will remember, was on the 10th of April, 1919, followed up by the 20th of April, 1919, and then followed up later on. Doan says Dyer was not interested, but follow me. On the 15th day of May, 1919, Doan wired from Shreveport to Dyer at Fort Worth, "Better go to Burke tonight. Sell both pieces soon as possible. Also Eastland acreage. Can use the money here to better advantage. Things look fine" (Tr. 225). That is on the 15th of May, 1919, before Dyer was told in this *private* conversation he could not go to Louisiana.

Again, on May 16, the next day Doan wired Dyer:

"We have bought several pieces. Will tell you details later this week. Like Shreveport as best place to do business" (Tr. pp. 225, 226). Now counsel has just told you that these telegrams are not from one man interested with another man, but that they were just general conversation.

On the 18th of May, 1919, Doan wired Dyer from Shreveport:

"We have made big purchases here of wonderful properties and need the money" (Tr. p. 226).

That is just information between one friend and another, but Dyer could not go to Louisiana,—was what Doan said.

On June 11, 1919, Doan wired from San Francisco to Dyer:

“Leaving for Shreveport Sunday night. Have arranged everything satisfactorily. Glad to hear good news” (Tr. p. 227).

That was with reference to one of the wells that had been bought in April, 1919, in Louisiana, and Dyer found that the well had landed, and he telegraphed Doan to San Francisco, and that is Doan’s answer to Dyer.

On June 17, 1919, Doan wired to Dyer:

“Giffin well completed. Looks fine. Hundred barrels. Everything in all fields looks encouraging” (Tr. page 228). That was just before the formation of the Doan Oil Company, on June 27th. It was just information—my learned friend says—from one friend to another. On June 24, 1919, Doan wired to Dyer:

“That well came in as a big gasser. No oil yet. Don’t look good” (Tr. page 230).

On June 25, 1919, Doan wired from Shreveport to Dyer:

“Titus and I have bought 80 acres of good stuff” (Tr. page 231).

On July 7, 1919, Doan wired from Shreveport to Dyer:

"Giffin well pumping over 100 barrels. Had cash offer of \$25,000 for Bull Bayou forty. We are putting up rig there now. Also drilling the second well on Giffin lease. Everything fine here" (Tr. page 231).

On July 18, 1919, from Shreveport Doan wired Dyer at San Francisco:

"Drilling at Bull Bayou big well just in near southeast corner of Pine Island lease which absolutely proves all of it. Come soon as possible" (Tr. page 234).

And this is all going on while Dyer is being *held* out of Louisiana.

On July 8, Doan wired to Dyer:

"Clark and Greer well on adjoining forty Bull Bayou forty flowing over thousand barrels from top of sand our ten inch casing cemented to-day" (Tr. page 233).

From there on, page 235 of the transcript, 236 of the transcript, 241 of the transcript, 243 of the transcript, 244 of the transcript, 237 of the transcript, 238, 246, 247 and 248, and 249, there are similar telegrams and similar letters which counsel says are merely information given from one friend to another, a lifelong friend, and the record shows that they met in 1907 down in Bakersfield.

The record will show that they had a deal with a man named Jergens along about April, a deal made by Dyer alone (Tr. 312), on which Doan got \$750, and the Archer County lease they made \$375 apiece on, a deal made by Dyer alone (Tr. p. 312).

In Louisiana Dyer made a deal on which they made a profit (Tr. 123). I have already given the Eastland County deal, the Tillman County deal, and the Lamb tract. Doan says, "I told Dyer to go up to Wichita Falls and make a very careful examination of the situation, and find out if there was any reason why we should not purchase the property" (Tr. 207). The title to that property was taken in the name of Doan, Trustee—that was in the record that I read to your Honors of the Doan Oil Company, showing that he transferred it to the Doan Oil Company—but later on, on cross-examination, he was obliged to say he carried it in his own name, Doan, and that he had sold it to a man named Carter, a friend of Titus, in Washington, for \$50, and evidently, on the testimony, the transfer was made for the purpose of evading income tax. He sold it to a man he never saw or heard of, sold it at a meeting at which Titus was present, and the suggestion was made by Titus that Carter was a neighbor of his, and Carter, without knowing anything about it, bought the property for \$50. That is all in the record (Tr. 206).

Now, the following pages of the transcript, 252, 208, 206, 221, 222, 224, 225, 226 and 162, will show the activities of Dyer in connection with the Lamb tract, that he (Dyer) paid for passing the title and he (Dyer) never got the money back for it, and that property went into the Doan Oil Company, through Doan hands, and still Dyer is not interested in Doan Oil Co.

Now, as to the American Oil Engineering Company. Counsel laid great stress on the fact that Dyer went away to Pittsburg in October. At that time they were very short of pipe over in Shreveport, and he went to Pittsburg in the interest of the American Oil Engineering Company for pipe for Oklahoma and pipe for Shreveport. He went on the business of the North Texas Supply Company, and to make a profit for it, and while there he met Mr. Meredith, of the American Oil Engineering Company through a wire transmitted by Doan. The understanding that they had when they made this North Texas Supply Company was that it was to only run a few months, when the Lucey Company was to take it over. Dyer was not to be tied up long. The American Oil Engineering Company wanted to tie up Dyer at that time, and Dyer declined until he came back and talked with Doan (Tr. 125). When he came back and talked it over with Doan, and told him what the proposition was, Doan told him to go ahead, that was the right thing, and it would put them in touch with big money, and later on a deal was made, an arrangement was made to begin in January, 1920 (Tr. 306), long after Dyer was to be out of the North Texas Supply Company. He was paid in January, 1920, \$1000 as a retainer (Tr. 306). That was carried on with the full knowledge of Doan, Doan knowing all the time he was drawing down the \$1000 monthly as Doan was doing likewise from the Doan Oil Co. The American Oil Engineering Company did carry a block of stock for

Dyer & Doan in it, American Oil Engineering Company (Tr. 167, 168).

With reference to the automobile, I want to refer to pages 231, 232, 264, 169 and 170. That was the machine that was purchased and then taken by Doan over to Shreveport and turned into the Doan Oil Company, and he took credit for it (Tr. 339).

Now, as to the Santa Maria Doan Syndicate. That was a California affair, and existed before they went over to Texas. It seemed that Doan advanced some money in 1918, and along in December Doan wanted it. A telegram was sent by Doan December 19, 1919, "I have obligations to meet January 1. Can you send in the \$6000 advanced by me your account Santa Maria well" (Tr. 159). The telegram was sent from Shreveport to Dyer in New York. Dyer answered: "Your wire 19th received just as I am leaving for California. I will arrange Santa Maria obligations from California if I am not in Texas before, but ask you to send statement Van Nuys Hotel, to meet me if possible in time. Did you close Santa Maria account since salvage? This was not done our last talk on this. At same time will you have Doan Oil Company statement Van Nuys for me, and also your and my joint account regarding Doan Oil Company and Louisiana. Will be glad settle both accounts if you wish. Try have this for me so I can meet your request. Will be Van Nuys for Christmas and keep touch with you. Best luck and Merry Christmas" (Tr. 293).

That is the telegram that was sent in reply to Doan at Shreveport from New York by Dyer.

Later on, on the 29th of December, 1919, Dyer being in Los Angeles and not having gotten anything from Doan, and received no word, wired to Doan at Shreveport from Los Angeles:

“Received no word or Santa Maria information at Los Angeles. Will fix this up if you can send it here. Discounted thirty thousand Lucey accounts in addition have January obligations financed now” (Tr. 294).

The Santa Maria account did not come, and the letter of January 10 following shows that Doan was looking for the books on which to make a statement, therefore he had not and could not then do so, and no statement was made until the 22nd of September, 1920. In the meantime, on the 21st of January, 1920, Dyer and Doan got together at Fort Worth and they had a talk about Dyer taking over his portion or half of the Doan Oil Company stock. Dyer wanted his stock, and Doan was still stalling, as he had been continually stalling theretofore. For instance, the record will show that on the 10th of November of 1919 Lucey, and Titus, and Doan, the three directors and only stockholders of the corporation, were in Shreveport, they had a meeting there, and on the 10th of November agreed that another 100,000 shares of the Doan Oil Company stock should be issued, and that it should be taken by the stockholders pro rata, that is, 50,000 shares by Titus by reason of his 50% stockholdings, 33,333 shares to Doan by reason of the stockholdings of Doan, and 13,000 shares to Lucey

by reason of the stockholdings of Captain Lucey (Tr. 171). On the 11th of November, the next day, Mr. Doan telegraphed Mr. Dyer:

“Titus and Lucey here. We have made no plans except to go along as usual” (Tr. p. 158). He concealed this stock issue from Dyer. He never told Dyer about this stock that was put out at this time. Your Honors will see from the record how the Doan Oil Company was going ahead by leaps and bounds, how, one well after another had come in. That they had sold off wildcat acreage at a price as high as they originally had paid for good acreage, and yet he deceives Dyer by this wire and Dyer discovers it at the trial. Titus had taken all of his stock, and Lucey had taken all of his stock, and the relatives and friends of Doan had taken all of his stock.

We get along again to January 21st, 1920, and we find there that Mr. Doan and Mr. Dyer are having a talk. Doan said that Dyer asked him for the stock, and in one place Doan said he agreed to give Dyer the stock and carry him for one-quarter, and in another place Doan said that he was going to give Dyer 50,000 shares of stock if he got his money, and he said Dyer gave him a check on that day for \$3000 on the Santa Maria obligation. However, there is a dispute about that conversation. Dyer said he told Doan he wanted his stock and wanted a settlement. But if your Honors will follow the letters and telegrams received and sent to Mr. Doan, and which are in the record—and, by the way, the

letters of Mr. Doan to Mr. Dyer, from July on, frequently acknowledge receipt of letters and telegrams from Mr. Dyer to Mr. Doan, but there are none of those telegrams or letters in the record. Mr. Doan must have received them, for he acknowledged receipt of them. He had an office in Shreveport, but he never produces a single one of them—not one; there are none of them in the record; why they are not here, we do not know. Were they here they would demonstrate who is right in this litigation.

But here is a letter following the conversation of January 21, 1920, which may throw some light on knowing whether Doan and Dyer were partners in the Doan Oil Co.

“Mr. L. E. Doan, Dear Larry: I am going to hold off the getting of the \$50,000 until the last minute after you have had your meeting with Mr. Titus and decided on your policy. I will not do this to inconvenience you, but for the purpose of being guided in getting my money. It will, of course, be necessary for me to give up a small piece of it in order to get this money, but should you decide on a sale policy, either of land outright or stock that would reimburse present holders, I, naturally, would want to take advantage of that and not give up any interest other than is necessary. This feature dawned on me after you left last night, and I wanted to explain it to you for your approval.” (Signed by Dyer) (Tr. 195).

On January 23rd, from Shreveport, Doan writes to Dyer: "I am in receipt of yours of the 21st and will state that there is no possibility of our making a sale of any property within the next few months" (Tr. 196).

If your Honor please, bear in mind that date is January 23, 1920, a letter from Doan to Dyer.

"If we do, the money would not go to the stockholders, but would go into the treasury *for expansion purposes*" (Tr. 196). That date and statement is interesting from this fact, that the testimony shows that Doan was then contemplating a dividend. Evidently it was to discourage Dyer. On the 23rd day of March, just 60 days after that, the company declared a dividend of 50 cents a share, half what the stock cost originally. There was no intention of their doing what Doan writes here, on January 23, that the money would go into the treasury *for expansion purposes*. There was no intention in the mind of Doan when he wrote this letter of doing anything of this kind, because on that date they were then negotiating for a sale to the General Petroleum Company, as I will soon show (Tr. 369).

Doan says: "If you are unable to arrange for your money by the 1st of February we will have to change *our* plans somewhat, because—I will have to raise some money at that time, and I am depending on you. Let me know at once, so I can make my arrangements accordingly. *If you have to give up one-quarter to raise your money, I will do it for you on the same basis*" (Tr. 196). There is a direct

admission from Doan that Dyer did own an interest in the Doan Oil Company. Reference was made in the preceding letter of January 21, 1920, that Dyer has to give up something for getting the money (Tr. 195), and here Doan says "If you have to give up one-quarter to raise your money I will do it for you on the same basis." Now, on the 26th of January, 1920, three days afterwards, Dyer replies to that letter of Doan's as follows:

"I explained to you when you were here it was agreed I could get this money by giving the $\frac{1}{4}$ interest mentioned. You state you would do this on the same basis. If this is agreeable I would much prefer to handle the matter together with you on this basis as it would eliminate any outsiders or complications.

"I will go no further to obtain this money on the outside. I want this absolutely agreeable to you either way, and if you prefer to have me get the money advise me and I will get it at once." Signed by "Dyer" (Tr. 197).

On February 9, 1920, Dyer follows that letter up with another letter to Doan (page 198 of the transcript):

"Mr. Couch has given me a check for \$2700, which is one-half of the selling price of 20 acres out of the Tillman County property." This still left 15 acres, the money for which Dyer got in March, 1920. That was the property, as I explained it to your Honors, in Oklahoma, which was turned in to the Doan Oil Company, and which was sold by

them for \$8000 odd. Here is an additional amount of money sent by Dyer to him on that sale. Whether the money got to the Doan Oil Company, we do not know, but from looking at the minutes at page 170, where Doan apparently foreclosed this transaction as to any future income or profit and putting two and two together it looks rather strange to me.

But, going on on that line, further on, at page 199 of the transcript Dyer says, "I have not had a letter from you in answer to my last letter asking if it was agreeable, as you had mentioned, on the carrying of my Doan Oil Company interest." Nor did Doan answer.

Now, may it please the Court, on the 22nd of March Dyer went over to Doan and demanded a settlement, and they had trouble there, and that was the date of the dissolution of partnership, as stated in the pleadings.

In the meantime, I had not quite finished with the Santa Maria business. Along in August of 1919 Doan wrote to Dyer and told him to put in a statement of his expenses and account, and they talked it over, and Dyer put in a statement of \$2600 odd. That was half of the automobile, and half of the expenses of the Oklahoma tract, and time put in in Oklahoma, and on the Lamb tract.

Dyer paid \$3000, according to Doan, January 21, 1920, although the check is dated December, 1919, on the Santa Maria deal. Counsel has arraigned Dyer claiming he owed Doan money on this Santa

Maria deal. The testimony shows Doan claimed \$6000 from Dyer on Santa Maria deal and Dyer gave a check for \$3000 and add the \$2600 on the automobile and Dyer's half of deal with Tom Owens and Couch and the money he was in on attorneys fees and Dyer was then over by \$1500.00 any claim Doan had. Dyer did not owe Doan any money he did not want to pay at all times on every transaction. He made a demand of Doan in 1919, insisting on a settlement, and he was finessed by Mr. Doan at all times out of a settlement. Doan told him to let it ride, although Doan was borrowing money himself, (Tr. 261; Tr. 355) evidently against that Doan Oil Co. collateral, but he would not give Dyer his share of collateral.

Now, as to the bonus stock in the North Texas Supply Company, I refer your Honors to the transcript, pages 214 and 262, where Mr. Doan flatly contradicts himself. In one place he said he was to share in the stock and the other place he said he was not. That is for your Honors to decide. That Doan was borrowing money, I refer your Honor to the transcript, pages 355 and 261.

Now, as to rig-building, and all of these things about the North Texas Supply Company, the testimony shows beyond contradiction that Dyer did put in a drilling concern, that the drilling concern was a failure, that the State Commissioner of Texas would not allow them to land tools or open a well there for a while. Mr. Carr says that Dyer sold all he could get from our company (Tr. page 281);

if he could have gotten more deliveries he could have sold more stuff (Tr. page 281). Dyer went to Shreveport and sold a good deal of stuff there (Tr. 282). Counsel applauds Carr,

“Well”, Mr. Doan writes, “I am thoroughly disgusted with Carr”, in his letter of October 27 (Tr. pages 248-249). “I am through with taking any of his bull”, referring to Carr (Tr. page 246).

Now, about Mr. Dyer’s ability to get the money to carry his stock, the record shows that he had the money coming from Fleishhacker, and from Porter, that he could get that at any time (Tr. 305).

Stress was laid upon the point that Mr. Dyer had the power of attorney of Mr. Doan. That was their method of doing business. Mr. Dyer had Mr. Doan’s power of attorney (page 121). Mr. Doan had Mr. Dyer’s power of attorney (Tr. 127).

So I do not see but what is sauce for the goose should be sauce for the gander.

The telegram I referred to about the value of the well is Transcript page 376.

There are very many other issues in the case, may it please the Court. There is the contract with the General Petroleum Company, three parties to the contract, Mr. Titus and Mr. Doan the parties of the first part, the Doan Oil Company party of the second part, and General Petroleum Corporation party of the third part (Tr. 369). The contract was that the General Petroleum Company should be given an option to purchase the property.

The Doan Oil Company was represented by Doan, president of the company, in the contract, and the General Petroleum Company paid down \$50,000 in cash, which shows the value of the property, and they paid down a large block of stock for the privilege of taking this option. Mr. Doan contended that that was a personal deal between Mr. Titus and Mr. Doan, on the one side, and the General Petroleum Company on the other side, and they were entitled to all of it. The lower court held that the transaction was in a fiduciary capacity, and was for the benefit of the stockholders of the Doan Oil Company. And I think, when your Honors come to look into this case you will find a most consistent effort on the part of Doan to do up another man, and when it is all boiled down and gets down to matters of cause and effect that you will find that Doan and Dyer were to get the money from Titus and Lucey, that they did get the money from Titus and Lucey, and that when Doan got that money into his hands and it turned out so well, he could not withstand his avarice, and he started immediately to do up Dyer entirely. An oral contract was proven, and you will find that an oral contract was proven out of the writings of Mr. Doan; you will find it not only in the telegrams and letters I have read, but you will find at least thirty more of the same character and kind that I have read to you in the record.